IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

Crl.MC.No. 1779 of 2007()

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CRA.124/2005 of ADDL.SESSIONS COURT (ADHOC), KOTTAYAM
CC.315/2003 of JUDL.MAGISTRATE OF FIRST CLASS-III, KOTTAYAM

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PETITIONER:

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JOY SEBASTIAN, S/O. DEVASIA,
AGED 36 YEARS,
PROPRIETOR, K.E. BAKERY,
KOODALLOOR, VATTUKULAM,
KADAPPOOR, KOTTAYAM.

BY ADV. SMT.LEENA KRISHNAN

RESPONDENTS:

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1. MATHA FLOUR MILLS (P) LTD.,
A PRIVATE LTD., COMPANY,
HAVING ITS HEAD OFFICE AT
M.L.. ROAD, KOTTAYAM DISTRICT,
REP. BY ITS POWER OF ATTORNEY HOLDER,
V.O. GEORGE, VAKKAYIL HOUSE,
PADUVA P.O., KOTTAYAM.

2. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI.S.U. NAZAR.
BY ADV. SRI.RAJEEV.P.NAIR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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**CRL.M.C.NO. 1779 OF 2007**

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Dated this the 1st day of June, 2007

**ORDER**

The petitioner has been found guilty, convicted and sentenced in a prosecution under Sec.138 of the Negotiable Instruments Act. The verdict of guilty, conviction and sentence have now become final with the order passed by this Court in revision. The petitioner is facing a sentence of imprisonment till rising of court. There is a further direction to pay an amount of Rs.50,000/- as compensation and in default, to undergo imprisonment for two months. The petitioner was directed to appear before the learned Magistrate on 10/7/06.

2. According to the petitioner, the petitioner/accused and the respondent/complainant has settled their disputes. In these circumstances, it is prayed that the dictum in **Sabu George v. Home Secretary (**2007 (1) KLT 982) may be invoked, the composition accepted and the sentence imposed

on the petitioner set aside.

3. I am afraid that the request cannot be accepted even though the learned counsel for the respondent/complainant has also appeared before this Court and confirmed that the matter has been settled and the payment of the compensation amount has been received. The decision in **Sabu George v. Home Secretary (**2007 (1) KLT 982) is not authority for the proposition and that any and every composition after the disposal of the revision can be accepted and conviction set aside on the basis of such composition. **Sabu George** was a hard case where in spite of the settlement of the dispute and composition of the compoundable offence, the accused would have been obliged to undergo incarceration in prison for a long period. It is only the case of that circumstance that the court thought it fit to invoke the powers under Sec.482 of the Cr.P.C. That is not the obvious situation here. The substantive sentence of imprisonment is only till rising of court. Compensation amount has been directed to be paid. The default sentence has been prescribed. It is submitted that the composition amount has already been paid. If it has already been paid, there can be no question of any default sentence being imposed on the

petitioner. This position has been made crystal clear in **Girish v. Muthoot Capital Service (P) Ltd.,** (2007 (1) KLT 16). The petitioner and the complainant can certainly appear before the learned Magistrate and file appropriate statement to show that the compensation amount as directed has already been paid. Once the learned Magistrate is satisfied about that, there can be no question of any default sentence being executed against the petitioner notwithstanding the fact that the payment has been made only after the time stipulated.

4. In the result, this Crl.M.C. is dismissed; but with the above observations.

5. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

**(R. BASANT, JUDGE)**

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P.S. to Judge